UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATURAL LIFE, INC. D/B/A HEART AND WEIGHT INSTITUTE,	**Case No. 28-CA-181573**
and	
MYEASHA STRAIN, an individual	

NATURAL LIFE INC. D/B/A HEART AND WEIGHT INSTITUTE'S ANSWERING BRIEF TO LIMITED EXCEPTIONS TO THE DECISION OF THE HONORABLE IRA SANDRON

Respectfully submitted,

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Respondent, Natural Life, Inc. d/b/a Heart and Weight Institute (hereinafter "Natural Life" or "Respondent"), hereby submits, by and through its Undersigned Counsel, this Answering Brief to the General Counsel's Limited Exception to the Decision in the above-captioned case issued by Administrative Law Judge Ira Sandron ("ALJ") on April 5, 2017.

I.
INTRODUCTION

While Natural Life has filed its own Exceptions to the Decision in this matter, the ALJ correctly ruled that Natural Life never promulgated and maintained a rule that employees were not allowed to be negative or complain about the terms and conditions of employment. The General Counsel's brief fails to provide any evidence that establishes the existence of such a rule, that the rule was maintained, and most importantly, that the employees' were even aware of the rule. As such, the ALJ's dismissal of the alleged violation of Section 8(a)(1) of the of the National Labor Relations Act (the "Act") on that basis was correct and supported by the underlying record.

II.
ARGUMENT

A. THE ALJ CORRECTLY CONCLUDED THAT NATURAL LIFE DID NOT VIOLATE THE ACT BY PROMULGATING AND MAINTAINING A RULE THAT EMPLOYEES COULD NOT BE NEGATIVE OR COMPLAIN ABOUT THE TERMS AND CONDITIONS OF EMPLOYMENT

An employer violates Section 8(a)(1) "when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights." *Martin Luther Mem'l Home, Inc.*, 343 NLRB 646 (2004), *citing Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining if a rule is unlawful, the National Labor Relations Board ("NLRB" or the "Board") must give the rule a reasonable reading, refrain from reading particular phrases in isolation and not presume improper influence with employee rights. *Lafayette Park Hotel* at 825, 827. A rule is unlawful if it explicitly restricts Section 7 activities. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). If it does

not, then it will be found to violate the Act upon a showing of one of the following: (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity, or (3) the rule was applied to restrict employee's exercise of Section 7 rights. *Id.* at 647.

In order to establish that a work rule violates Section 8(a)(1) of the Act, the General Counsel must first prove that Natural Life actually promulgated a work rule, and if so, the test articulated *in Lutheran Heritage Village-Livonia* would then be used to determine if the rule was unlawful.

1. <u>The General Counsel Failed to Present Evidence that Natural Life Ever Promulgated or Maintained the Work Rule at Issue</u>

The General Counsel incorrectly assumes that Natural Life must have had a work rule that prohibited employees from complaining because only a few employees who heard Guggia speak on July 27 were actually terminated. This argument is conclusory and is not supported by the evidence presented at the hearing.

The ALJ expressly concluded that Natural Life never promulgated or maintained such a work rule. (Decision, p. 18:14-19.) Therefore, absent a finding by the ALJ that Natural Life had created such a rule on July 27, the General Counsel's exception fails.

Even assuming there was a finding that such a rule existed, the General Counsel failed to submit evidence during the hearing that Findley, the one employee who was not terminated on July 27, understood that a new work rule had been created and remained in effect. Further, the General Counsel did not submit evidence that the employees who were rehired after July 27, Pappan, Boyd, and Smith, ever recognized or were made aware that on July 27, Natural Life, by way of Guggia's comments, had created, implemented, and maintained a new work rule that prohibited employees from making negative comments and complaining about their employment.

Indeed, the ALJ found that there was "evidence that since the resumption of the sales department's operation, Guggia has said anything along the same lines." (Decision, p. 18:14-19.) The General Counsel could have called these employees as witnesses at the hearing to attempt to establish both the existence and maintenance of such a work rule. Natural Life should not be penalized for General Counsel's failure in this regard.

The ALJ also properly determined that "it is difficult to conceptualize how Guggia was promulgating a rule when all of the employees to whom she spoke were being discharged; there would be no rules of any kind to enforce, once they were no longer employed." (Decision, p. 18:14-19.) The sole purpose of the meeting on July 27 was to discharge the sales employees. It was not to establish a new work rule going forward, as there would no longer be any sales employees. The General Counsel's argument that a rule could be made even when there were no employees against whom to enforce the rule, simply does not make sense.

2. <u>Guggia was not a Sales Manager at the Time of the July 27 Meeting and did not have authority to Promulgate a New Work Rule</u>

As discussed at length in Natural Life's Brief in Support of Exceptions, the ALJ incorrectly held that Guggia was Natural Life's agent and/or was vested with actual and apparent authority to speak on behalf of Natural Life at the July 27 meeting. The reality, however, is that Guggia was not a sales manager at the time of that meeting, did not have authority to promulgate and implement work rules, and was never regarded by the employees as having the ability to do so. Further, General Counsel failed to submit any evidence that Guggia ever referenced or discussed this purported new work rule at any time after July 27. Accordingly, the ALJ correctly concluded that Natural Life ever promulgated or maintained a work rule that chilled the rights of Natural Life's employees to exercise their Section 7 rights.

III.
CONCLUSION

For all of the reasons set forth above, Natural Life respectfully requests that the Board deny the General Counsel's Limited Exception and uphold the ALJ's Decision with respect to this discrete issue.

Dated: June 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that Respondent, Natural Life Inc. d/b/a Heart And Weight Institute's Answering Brief to Limited Exceptions to Decision of The Honorable Ira Sandron, Case 28-CA-181573, was served via E-filing and E-Mail on June 14, 2017, on the following:

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